

## § 648.53

## 50 CFR Ch. VI (10–1–10 Edition)

scallops outside of the Access Areas described in § 648.59(a) through (e).

(g) *Possession limit to defray the cost of observers in Access Areas for LAGC IFQ vessels.* An LAGC IFQ vessel with an observer on board may retain, per observed trip, up to 1 day's allowance of the possession limit allocated to limited access vessels, as established by the Regional Administrator in accordance with § 648.60(d), provided the observer set-aside specified in § 648.60(d)(1) has not been fully utilized. For example, if the limited access vessel daily possession limit to defray the cost of an observer is 180 lb (82 kg), the LAGC IFQ possession limit to defray the cost of an observer would be 180 lb (82 kg) per trip, regardless of trip length.

[73 FR 20122, Apr. 14, 2008, as amended at 74 FR 20555, May 4, 2009; 75 FR 36569, June 28, 2010]

### **§ 648.53 Target total allowable catch, DAS allocations, and individual fishing quotas.**

(a) *Target total allowable catch (TAC) for scallop fishery.* The annual target total TAC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55. The annual target TAC shall include the TAC for all scallop vessels fishing in open areas and Sea Scallop Access Areas, but shall exclude the TAC established for the Northern Gulf of Maine Scallop Management Area as specified in § 648.62. After deducting the total estimated incidental catch of scallops, as specified at § 648.53(a)(9), by vessels issued incidental catch general category scallop permits, and limited access and limited access general category scallop vessels not declared into the scallop fishery, the annual target TAC for open and Sea Scallop Access Areas shall each be divided between limited access vessels, limited access vessels that are fishing under a limited access general category permit, and limited access general category vessels as specified in paragraphs (a)(3) through (a)(6) of this section. In the event that a framework adjustment does not implement an annual TAC for a fishing or part of a fishing year, the preceding fishing year's scallop regulations shall apply.

(1) *2010 fishing year target TAC for scallop fishery.* The 2010 fishing year TAC is 21,445 mt, 94.5 percent of which shall be allocated to the limited access fishery, 5 percent of which shall be allocated to IFQ scallop vessels, and 0.5 percent of which shall be issued to limited access vessels also issued IFQ scallop permits and that are fishing under general category regulations. These percentages reflect the TAC allocations prior to the deduction of set-asides for observer coverage and research.

(2) [Reserved]

(3) *Access area TAC.* The TAC for each Access Area shall be determined through the framework adjustment process described in § 648.55 and specified in § 648.59. The TAC set-asides for observer coverage and research shall be deducted from the TAC in each Access Area prior to assigning the target TAC and trip allocations for limited access scallop vessels, and prior to allocating TAC to limited access general category vessels. The percentage of the TAC for each access area allocated to limited access vessels, limited access general category vessels, and limited access vessels fishing under general category permits shall be specified in accordance with § 648.60 through the framework adjustment process specified in § 648.55.

(4) *Open area target TAC for limited access vessels.* The open area TAC specified in this paragraph (a)(4) excludes the open area DAS set-aside specified in (g)(1) and (2) of this section, the access area TACs specified in § 648.59, and access area set-asides specified in § 648.60(d) and (e).

(i) *2010 fishing year.* The target TAC for limited access vessels fishing under the scallop DAS program specified in this section is 10,330 mt, including open area DAS for observer and research set-aside TACs.

(ii) [Reserved]

(5) *TACs for IFQ scallop vessels.* The TACs specified in this paragraph (a)(5) have accounted for the access area set-asides specified in § 648.60(d) and (e).

(i) *IFQ vessels without a limited access scallop permit.* For the 2010 fishing year, such vessels are allocated 1,055 mt, which includes both the open area TAC

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(547 mt) and the access area TACs specified in § 648.59.

(ii) *IFQ scallop vessels with a limited access scallop permit.* Such vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs as a limited access vessel shall be allocated 0.5 percent of the annual target TAC specified in accordance with this paragraph (a). For the 2010 fishing year, the IFQ TAC for IFQ vessels with a limited access scallop permit is 106 mt.

(6) *Northern Gulf of Maine Scallop Fishery.* The TAC for the Northern Gulf of Maine Scallop Fishery shall be specified in accordance with § 648.62, through the framework adjustment process specified in § 648.55. The Northern Gulf of Maine Scallop Fishery TAC is specified in § 648.62(b)(1).

(7)—(8) [Reserved]

(9) *Scallop incidental catch target TAC.* The 2010 incidental catch target TAC for vessels with incidental catch scallop permits is 50,000 lb (22,680 kg).

(b) *DAS allocations.* (1) Total DAS to be used in all areas other than those specified in § 648.59 shall be specified through the framework adjustment process, as specified in § 648.55, using the target TAC for open areas specified in paragraph (a) of this section and estimated catch per unit effort. The total DAS for 2010 are 13,324. After accounting for applicable set-asides, the total DAS allocated the limited access fishery are 12,920.

(2) Prior to setting the DAS allocations specified in paragraph (b)(4) of this section, 1 percent of total available DAS will be set aside to help defray the cost of observers, as specified in paragraph (h)(1) of this section. Two percent of total available DAS will be set aside to pay for scallop related research, as outlined in paragraph (h)(2) of this section.

(3) *Assignment to DAS categories.* Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(4) (Full-time, Part-time, or Occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category. A vessel whose owner/operator has declared out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its maximum allocated DAS, may leave port without being assessed a DAS, as long as it has made an appropriate VMS declaration, as specified in § 648.10(f), does not fish for or land per trip, or possess at any time, more than 400 lb (181.4 kg) of shucked or 50 bu (17.6 hL) of in-shell scallops, and complies with all other requirements of this part. The annual open area DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

DAS category	2010
Full-time .....	38
Part-time .....	15
Occasional .....	3

(i) A limited access vessel that lawfully uses more open area DAS in the 2010 fishing year than specified in this section shall have the DAS used in excess of the 2010 allocation specified in this paragraph (b)(4) deducted from its 2011 open area DAS allocation.

(ii) [Reserved]

(5) *Additional open area DAS.* If a TAC for yellowtail flounder specified in § 648.85(c) is harvested for an Access Area specified in § 648.59(b) through (d), a scallop vessel with remaining trips in the affected Access Area shall be allocated additional open area DAS according to the calculations specified in paragraphs (b)(5)(i) through (iii) of this section.

(i) When the Nantucket Lightship Access Area closes due to the yellowtail flounder bycatch TAC, for each remaining complete trip in the Nantucket Lightship Access Area, a full-time vessel may fish an additional 5.8 DAS in open areas, a part-time vessel may fish an additional 4.6 DAS in open areas, and an occasional vessel may fish an additional 1.9 DAS during

the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). If a vessel has unused broken trip compensation trip(s), as specified in § 648.60(c), when the Nantucket Lightship Access Area closes due to the yellowtail flounder bycatch TAC, it will be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Nantucket Lightship Access Area compensation trip (half of the possession limit) at the time of a Nantucket Lightship Access Area yellowtail flounder bycatch TAC closure, the vessel would be allocated 2.9 DAS (half of 5.8 DAS).

(ii) [Reserved]

(6) DAS allocations and other management measures are specified for each scallop fishing year, which begins on March 1 and ends on February 28 (or February 29), unless otherwise noted.

(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 2 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS, the DAS allocations and Access Area trip allocations from the most recent fishing year shall remain in effect for the next fishing year. The Council may also recommend adjustments to DAS allocations through a framework action at any time.

(d) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

(e) *Accrual of DAS.* All DAS fished shall be charged to the nearest minute.

A vessel carrying an observer and authorized to be charged fewer DAS in Open Areas based on the total available DAS set aside under paragraph (g)(1) of this section shall be charged at a reduced rate as specified in paragraph (g)(1) of this section.

(f) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(g) *DAS set-asides—(1) DAS set-aside for observer coverage.* As specified in paragraph (b)(2) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS specified in paragraph (b)(1) of this section shall be set aside from the total DAS available for allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage is 135 DAS for the 2010 fishing year. Vessels carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate, based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. This DAS adjustment factor may also be changed during the fishing year if fishery conditions warrant such a change. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost

of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

(2) *DAS set-aside for research.* As specified in paragraph (b)(2) of this section, to help support the activities of vessels participating in certain research, as specified in §648.56, the DAS set-aside for research is 269 DAS for the 2010 fishing year.

(h) *Annual Individual fishing quotas—*

(1) *IFQ restriction.* For each fishing year of the IFQ program, a vessel issued an IFQ scallop permit may only harvest and land the total amount of scallop meats allocated in accordance with this subpart. Unless otherwise specified in this part, a vessel allocated scallop IFQ may not exceed the possession limits specified in §648.52 on any trip.

(2) *Calculation of IFQ.* The total allowable catch allocated to IFQ scallop vessels, and the TAC allocated to limited access scallop vessels issued IFQ scallop permits, as specified in paragraphs (a)(5)(i) and (ii) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to §648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

(i) *Individual fishing quota.* The IFQ for an IFQ scallop vessel shall be the vessel's contribution percentage as specified in paragraph (h)(2)(iii) of this section and determined using the steps specified in paragraphs (h)(2)(ii) of this section, multiplied by the TAC allocated to the IFQ scallop fishery, or limited access vessels issued an IFQ scallop permit, as specified in paragraphs (a)(3)(ii) and (iii) of this section.

(ii) *Contribution factor.* An IFQ scallop vessel's contribution factor is calculated using the best year, years active, and index factor as specified in paragraphs (h)(2)(ii)(A) through (C) of this section. A vessel's contribution factor shall be provided to the owner of a qualified limited access general category vessel following initial application for an IFQ scallop permit as specified in §648.4(a)(2)(ii)(E), consistent with confidentiality restrictions of the

Magnuson-Stevens Act specified at 16 U.S.C. 1881a.

(A) *Best year determination.* An eligible IFQ scallop vessel's highest scallop landings in any scallop fishing year that the vessel was issued a general category scallop permit between March 1, 2000, and November 1, 2004, shall be determined using NMFS dealer reports. Scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004. If a dealer reported more than 400 lb (181.4 kg) of scallops landed on a trip, only 400 lb (181.4 kg) will be credited for that trip toward the best year calculation. For dealer reports that indicate clearly that the landings were bushels of in-shell scallops, a conversion of 8.33 lb (3.78 kg) of scallop meats per bushel shall be used to calculate meat-weight, up to a maximum of 400 lb (181.4 kg) per trip.

(B) *Years active.* For each eligible IFQ scallop vessel, the total number of scallop fishing years during the period March 1, 2000, through November 1, 2004, in which the vessel had a general category scallop permit and landed at least 1 lb (0.45 kg) of scallop meats, or in-shell scallops, shall be counted as active years based on NMFS dealer reports. Scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004.

(C) *Index to determine contribution factor.* For each eligible IFQ scallop vessel, the best year as determined pursuant to paragraph (a)(2)(ii)(E)(I) of this section shall be multiplied by the appropriate index factor specified in the following table, based on years active as specified in paragraph (a)(2)(ii)(E)(2) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in §648.53(a)(2) and the method of calculating the IFQ provided in §648.53(h).

Years active	Index factor
1 .....	0.75
2 .....	0.875
3 .....	1.0
4 .....	1.125
5 .....	1.25

(D) *Contribution factor example.* If a vessel landed 48,550 lb (22,022 kg) of scallops in its best year, and was active

in the general category scallop fishery for 5 years, the vessel's contribution factor is equal to 60,687 lb (27,527 kg) (48,550 lb (22,022 kg \* 1.25).

(iii) *Contribution percentage.* A vessel's contribution percentage will be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued an IFQ scallop permit. The sum of the contribution factors shall be determined when all IFQ scallop vessels are identified. Continuing the example in paragraph (h)(1)(ii)(D) of this section, the sum of the contribution factors for 380 IFQ scallop vessels is estimated for the purpose of this example to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel is 1.45 percent (60,687 lb (27,527 kg) / 4.18 million lb (1,896 mt) = 1.45 percent).

(iv) *Vessel IFQ Example.* Continuing the example in paragraphs (h)(1)(ii)(D) and (h)(1)(iii) of this section, with a TAC allocated to IFQ scallop vessels estimated for this example to be equal to 2.5 million lb (1,134 mt), the vessel's IFQ would be 36,250 lb (16,443 kg) (1.45 percent \* 2.5 million lb (1,134 mt)).

(3) *IFQ ownership restrictions*—(i) *IFQ scallop vessel IFQ cap.* (A) Unless otherwise specified in paragraph (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section.

(B) A vessel may be initially issued more than 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section. A vessel that is allocated an IFQ that exceeds 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section in accordance with this paragraph (h)(3)(i)(B), may not transfer IFQ to that vessel, as specified in paragraph (h)(5) of this section.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(i)(A) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 2-percent ownership restriction being exceeded.

(ii) *IFQ ownership cap.* (A) For any vessel acquired after June 1, 2008, a vessel owner is not eligible to be issued an IFQ scallop permit for the vessel, and/or a confirmation of permit history, and is not eligible to transfer IFQ to the vessel, if, as a result of the issuance of the permit and/or confirmation of permit history, or IFQ transfer, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in more than 5 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section.

(B) Vessel owners who were initially issued a 2008 IFQ scallop permit or confirmation of permit history, or who were issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(ii)(A) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5-percent ownership restriction being exceeded.

(C) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(iii) *Limited access scallop vessels that have been issued an IFQ scallop permit.* The IFQ scallop vessel IFQ cap and IFQ ownership cap specified in this paragraph (h)(3) do not apply to limited access scallop vessels that are also issued

a limited access general category scallop permit because such vessels are already subject to an ownership limitation, as specified in § 648.4(a)(2)(i)(M).

(4) *IFQ cost recovery.* A fee, not to exceed 3 percent of the ex-vessel value of IFQ fish harvested, shall be collected to recover the costs associated with management, data collection, and enforcement of the IFQ program. The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in this paragraph (h), shall be responsible for paying the fee as specified by NMFS in this paragraph (h)(4). An IFQ scallop vessel shall incur a cost recovery fee liability for every landing of IFQ scallops. The IFQ scallop permit holder shall be responsible for collecting his/her own fee for all of his/her IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year.

(i) *Cost recovery fee determination.* The ex-vessel value of scallops shall be determined as an average of the ex-vessel value, as determined by Northeast Federal dealer reports, of all IFQ scallops landed between March 1 and September 30 of the initial year of the IFQ scallop program, and from October 1 through September 30 of each year thereafter.

(ii) *Fee payment procedure.* On or about October 31 of each year, NMFS shall mail a cost recovery bill to each IFQ scallop permit holder for the previous cost recovery period. An IFQ scallop permit holder who has incurred a fee must pay the fee to NMFS by January 1 of each year. Cost recovery payments shall be made electronically via the Federal web portal, [www.pay.gov](http://www.pay.gov), or other Internet sites as designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the paper bill. Payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Payment by check may be authorized by NMFS if it has determined that electronic payment is not possible (for example, if the geographical area of an individual(s) is affected by catastrophic conditions).

(iii) *Payment compliance.* An IFQ scallop permit holder that has incurred an IFQ cost recovery fee must pay the fee to NMFS by January 1 of each year. If the cost recovery payment, as determined by NMFS, is not made by January 1, NMFS may deny the renewal of the IFQ scallop permit until full payment is received. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ scallop permit holder has not paid the full amount due, NMFS shall notify the IFQ scallop permit holder by letter. NMFS shall explain the discrepancy and provide the IFQ scallop permit holder 30 days to either pay the amount specified by NMFS or to provide evidence that the amount paid was correct. If the IFQ scallop permit holder submits evidence in support of his/her payment, NMFS shall determine if there is any remaining disagreement as to the appropriate IFQ fee, and prepare a Final Administrative Determination (FAD). The FAD shall set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. A FAD shall be the final agency action, and, if the FAD determines that the IFQ scallop permit holder is out of compliance, the FAD shall require payment within 30 days. If a FAD is not issued until after the start of the fishing year, the IFQ scallop permit holder may be authorized to fish temporarily by the Regional Administrator until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the IFQ scallop permit shall not be issued until such terms are met. If NMFS determines that the IFQ scallop permit holder owes additional fees for the previous cost recovery period, and the IFQ scallop permit has already been renewed, NMFS shall issue a FAD, at which point the permit holder shall have 30 days to comply with the terms of the FAD or NMFS may withdraw the issuance of the IFQ scallop permit until such terms are met. If such payment is not received within 30 days of issuance of the FAD, NMFS shall refer the matter to the appropriate authorities within the U.S. Department of the

Treasury for purposes of collection, and no IFQ permit held by the permit holder may be renewed until the terms of the FAD are met. If NMFS determines that the conditions of the FAD have been met, the IFQ permit holder may renew the IFQ scallop permit(s). If NMFS does not receive full payment prior to the end of the fishing year, the IFQ scallop permit shall be considered voluntarily abandoned, pursuant to § 648.4(a)(2)(ii)(K), unless otherwise determined by the Regional Administrator.

(5) *Transferring IFQ*—(i) *Temporary IFQ transfers*. Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may temporarily transfer its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be transferred only once during a given fishing year. Temporary IFQ transfers must be in the amount of at least 100 lb (45 kg), or the entire allocation may be transferred to another vessel. If a vessel has previously transferred a portion of its IFQ and the remaining allocation is less than 100 lb (45 kg), the remaining IFQ may be transferred in full to another vessel. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(ii) *Permanent IFQ transfers*. Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer one or more entire IFQs permanently to or from another IFQ scallop vessel. A vessel permanently transferring its IFQ to another vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits. Any such transfer cannot be limited in duration and is permanent unless the IFQ is subsequently transferred to another IFQ scallop vessel, other than the originating IFQ scallop vessel, in a subsequent fishing year. The Regional Ad-

ministrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions*. The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. IFQ can be transferred only once during a given fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2 percent of the TAC allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of or interest in general category scallop allocation that exceeds 5 percent of the TAC allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer or receive IFQ from another IFQ scallop vessel.

(iv) *Application for an IFQ transfer*. The owner of vessels applying for a transfer IFQ must submit a completed application form obtained from the Regional Administrator. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the scallop fishing year, provided the vessel transferring the IFQ to another vessel has not utilized any of its own IFQ in that fishing year. Applications for temporary transfers received 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ prior to the expiration of the fishing year for which the IFQ transfer, if approved, would be effective.

(A) *Application information requirements*. An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or State registration number;

transferee's name, vessel name, permit number, and official number or State registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to temporarily transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be in increments of less than 100 lb (45 kg) unless that value reflects the total IFQ allocation remaining on the transferor's vessel, or the entire allocation. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. If applicable, an application for a permanent IFQ transfer must be accompanied by verification, in writing, that the transferor either has requested cancellation of all other limited access Federal fishing permits, or has applied for a transfer of all of its limited access permits in accordance with the vessel replacement restrictions under § 648.4.

(B) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 30 days of receipt of an application.

(C) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's vessel has fished under its IFQ prior to the completion of the transfer request; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to a final administrative decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2 percent of the TAC allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of or interest in general category scallop allocation that exceeds 5 percent of the TAC allocated to IFQ scallop vessels; or any other failure to

meet the requirements of this subpart. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision, by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

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#### § 648.54 State waters exemption.

(a) *State eligibility for exemption.* (1) A state may be eligible for a state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(2) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. In such case, the Regional Administrator shall publish a rule in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, to provide the exemption for such states.

(3) A state that has been issued a state waters exemption under paragraph (a)(4) of this section must immediately notify the Regional Administrator of any changes in its scallop conservation program. The Regional Administrator shall review these changes and, if a determination is made that the state's conservation program jeopardizes the biomass and fishing mortality/effort limit objectives of the FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, to eliminate the exemption for that state.

(4) The Regional Administrator has determined that the State of Maine has a scallop fishery conservation program for its scallop fishery that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. A vessel fishing in State of Maine waters may fish under the State of Maine state waters exemption,